

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKI J. STEVENSON and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Dallas, Tex.

*Docket No. 96-665; Submitted on the Record;
Issued January 21, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she has more than a 10 percent permanent impairment of her right and left upper extremities, for which she received a schedule award.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision regarding whether appellant has more than a 10 percent permanent impairment of her right and left upper extremities, for which she received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,² including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.³

Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office of Workers' Compensation Programs has adopted the American Medical Association, *Guides to the*

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

Evaluation of Permanent Impairment (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

In the present case, the Office accepted that appellant sustained bilateral carpal tunnel syndrome due to factors of her federal employment. On September 29, 1995 appellant received a schedule award for a 10 percent permanent impairment of her right and left upper extremities.

The Office based its schedule award on a September 21, 1995 evaluation in which an Office medical adviser applied the standards of the fourth edition of the A.M.A., *Guides* to the May 26, 1995 findings of Luiz C. Toledo, an attending Board-certified orthopedic surgeon, in order to determine that appellant had a 10 percent permanent impairment of her right and left upper extremities. Dr. Toledo stated in his May 26, 1995 report that appellant had significant residual weakness and numbness with pain in the upper extremities, and equated this to a seven percent impairment of the left upper extremity, and an eight percent impairment of the right upper extremity, pursuant to the third edition of the A.M.A., *Guides*. In his report dated September 21, 1995, the Office medical adviser reviewed Dr. Toledo's findings, noted that the third edition of the A.M.A., *Guides*, is inapplicable to this claim,⁶ and stated that in his judgment, for each arm, appellant's impairment was comprised of a ten percent impairment due to mild entrapment neuropathy of the median nerve in the wrist, as derived from Table 16 on page 57.⁷ A review of the medical evidence of record reveals, however, that on June 26, 1995, prior to the Office medical adviser's review of this claim, the Office received a more detailed supplemental report from Dr. Toledo, in which the physician indicated that appellant sustained, in each arm, a 30 degree loss of both extension and flexion and a 10 degree loss of both radial and ulnar deviation, in addition to a 10 percent loss of function due to sensory deficit. Consequently, as it appears from the record that the Office medical adviser was unaware of these additional findings by Dr. Toledo, it is appropriate that appellant's condition be further evaluated for a possible additional permanent impairment in this regard.

The case will be remanded to the Office for further evaluation of the permanent impairment of appellant's right and left upper extremities in accordance with the appropriate standards of the A.M.A., *Guides*.

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁶ In the present case, the fourth edition of the A.M.A., *Guides* provides the appropriate standards for evaluating appellant's upper extremity impairment in that appellant's schedule award for impairment was granted by the Office after November 1, 1993, the effective date of the fourth edition of the A.M.A., *Guides*; see FECA Bulletin No. 94-4 (issued November 1, 1993).

⁷ See A.M.A., *Guides* 57, Table 16 (4th ed. 1993).

The decision of the Office of Workers' Compensation Programs dated September 29, 1995 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
January 21, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member